

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

NORTHWEST ENVIRONMENTAL DEFENSE
CENTER, a non-profit corporation;
NORTHWEST ENVIRONMENTAL ADVOCATES,
a non-profit corporation;
COLUMBIA RIVERKEEPER, a non-profit
corporation; and WILLAMETTE
RIVERKEEPER, a non-profit
corporation,

07-CV-1396-BR

OPINION AND ORDER

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, a United
States Government Agency; STEPHEN
JOHNSON, Administrator,
Environmental Protection Agency;
and MICHAEL F. GEARHEAD, Director,
Office of Water and Watersheds
Environmental Protection Agency
Region 10,

Defendants.

MELISSA POWERS

Pacific Environmental Advocacy Center
10015 S.W. Terwilliger Blvd.
Portland, OR 97219
503-768-6727

Attorneys for Plaintiffs Northwest Environmental
Defense Center and Northwest Environmental Advocates

BRETT VANDENHEUVEL

Columbia Riverkeeper
917 Oak St., Suite 414
Portland, OR 97205
(503) 224-3240

Attorney for Plaintiff Columbia Riverkeeper

BRENNA BELL

Willamette Riverkeeper
1515 S.E. Water Ave., Suite 102
Portland, OR 97214
(503) 223-6418

Attorney for Plaintiff Willamette Riverkeeper

HARDY MYERS

Attorney General

KAREN L MOYNAHAN

Senior Assistant Attorney General
Department of Justice
1162 Court Street N.E.
Salem, OR 97301-4096
(503) 947-4700

Attorneys for Intervenor State of Oregon

BROWN, Judge.

This matter comes before the Court on the State of Oregon's Motion to Intervene (#5) to defend regulations the State developed to maintain water quality pursuant to the Federal Water

Pollution Control Act (Clean Water Act or CWA), 33 U.S.C. §§ 1251-1387.

Plaintiffs do not object to the State of Oregon's Motion to Intervene. Although the United States Environmental Protection Agency (EPA) has not yet appeared, the State of Oregon asserts EPA does not take a position on the State's Motion.

For the following reasons, the Court **GRANTS** the State's Motion to Intervene.

BACKGROUND

Plaintiffs filed a Complaint against Defendants on September 20, 2007, alleging EPA approved the State of Oregon's CWA compliance-schedule regulation in violation of the Endangered Species Act, 16 U.S.C. §§ 1531-1544, and the Administrative Procedures Act, 5 U.S.C. §§ 551-59, 701-06. See Or. Admin. R. 340-041-0061(16)(2007). Plaintiffs specifically allege EPA failed to conduct the inter-agency consultation required by the ESA to ensure EPA's approval would not jeopardize or result in loss of critical habitat for any listed species. See 16 U.S.C. § 1536(a)(2). In addition, Plaintiffs allege EPA's approval of Oregon's compliance-schedule regulation was arbitrary and capricious, did not comply with the CWA, and exceeded EPA's statutory authority because (1) Oregon's compliance-schedule regulation permits discharges in violation of CWA water-quality

standards and (2) EPA failed to conduct an anti-degradation review to ensure the compliance schedules would not result in further degradation of water quality. See 33 U.S.C. §§ 1313(c)(2), 1313(d)(4)(B). See also 40 C.F.R. pt. 131, subpt. B.

Plaintiffs did not name the State of Oregon as a defendant. Pursuant to Federal Rule of Civil Procedure 24, the State of Oregon now seeks to intervene as a matter of right or, in the alternative, to intervene permissively.

STANDARDS

To intervene as a matter of right under Rule 24(a)(2), an applicant must establish

(1) it has a significant protectable interest relating to the property or transaction that is the subject of the action; (2) the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its interest; (3) the application is timely; and (4) the existing parties may not adequately represent the applicant's interest.

United States v. Alisal Water Corp., 370 F.3d 915, 918-19 (9th Cir. 2004). Courts broadly interpret these requirements, together with practical and equitable considerations, to favor intervention. *Id.* at 919.

DISCUSSION

The State of Oregon seeks to intervene in this matter to protect its interests in developing and maintaining water-quality regulations in Oregon. As noted, Plaintiffs contend EPA's approval of Oregon's compliance-schedule regulation violated the ESA and the APA in part because Oregon's compliance schedule violates CWA water-quality standards. Thus, the sufficiency of Oregon's compliance-schedule regulation and Oregon's reliance on that regulation for issuing permits under the CWA are at issue. The Court, therefore, finds the State of Oregon has a significant interest in the issues raised by Plaintiffs in their Complaint.

In addition to Plaintiffs' challenge of the consistency of Oregon's compliance-schedule regulation with the CWA, Plaintiffs also seek to enjoin Oregon from relying on its regulation when issuing permits under the CWA. If Oregon were not allowed to intervene, it would be unable to protect its interests in creating and relying on its compliance-schedule regulation for the purpose of issuing permits under the CWA.

The State of Oregon also persuasively asserts EPA will not necessarily represent Oregon's interests or adequately defend its compliance-schedule regulation.

Finally, Oregon's Motion to Intervene in this matter is made early in the proceedings and does not prejudice the parties as evidenced by the absence of any objections to the Motion. Thus,

the Court deems the State's Motion to be timely.

In summary, the Court concludes on this record that the State of Oregon has satisfied the requirements of Federal Rule of Civil Procedure 24(a)(2) and is entitled to intervene as a matter of right.

CONCLUSION

For these reasons, the Court **GRANTS** the State of Oregon's Motion to Intervene (#5) as a matter of right.

IT IS SO ORDERED.

DATED this 26th day of October, 2007.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge